

ASSEMBLY BILL

No. 983

Introduced by Assembly Member Melendez

February 22, 2013

An act to amend Sections 21701, 21702.5, 21703, 21705, 21706, 21710, and 21713 of the Business and Professions Code, relating to self-service storage facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 983, as introduced, Melendez. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice by certified mail to the occupant's address. After sending a notice, the owner may, within 14 days of the termination date specified in the preliminary lien notice, deny the occupant access to the space, enter the space, and remove property to safekeeping. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to a lien sale. Existing law provides that an owner may sell the property subject to lien if the occupant cannot be contacted or served at the address provided in the declaration.

This bill would allow an owner to send a preliminary lien notice by email. This bill would allow an owner to deny the occupant access to the space, enter the space, and remove property to safekeeping by the termination date specified in the preliminary lien notice. This bill would

allow an owner to have a vehicle, watercraft, or trailer, subject to lien, towed from the premises if rent and other charges have not been paid for 60 days and the required notice has been sent. This bill would make technical changes to the declaration in opposition to lien sale, as specified. This bill would remove the provision allowing an owner to sell the property subject to lien if the occupant cannot be contacted or served at the address provided in the declaration. This bill would specify that an occupant has 30 days from the date of the owner's receipt of the declaration in opposition to lien sale to serve the owner and file a complaint in a court of competent jurisdiction, otherwise the owner may enforce the lien and sell the goods.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21701 of the Business and Professions
2 Code is amended to read:
3 21701. For the purposes of this chapter, the following terms
4 shall have the following meanings:
5 (a) "Self-service storage facility" means real property designed
6 and used for the purpose of renting or leasing individual storage
7 space to occupants who are to have access to the space for the
8 purpose of storing and removing personal property or for storing
9 individual storage containers provided to occupants who have
10 exclusive use of the container for the purpose of storing and
11 removing personal property, whether or not the individual storage
12 containers are transported pursuant to Section 21701.1. Self-service
13 storage facility ~~does~~ shall not include a garage or other storage
14 area in a private residence. ~~No~~ An occupant ~~may~~ shall not use a
15 self-service storage facility for residential purposes. A self-service
16 storage facility is not a warehouse, nor a public utility, as defined
17 in Section 216 of the Public Utilities Code. If an owner issues a
18 warehouse receipt, bill of lading, or other document of title for the
19 personal property stored, the owner and the occupant are subject
20 to the provisions of Division 7 (commencing with Section 7101)
21 of the Commercial Code, and the provisions of this chapter ~~do~~
22 shall not apply.
23 (b) "Owner" means the owner, operator, lessor, or sublessor of
24 a self-service storage facility, his or her agent, or any other person

1 authorized by him or her to manage the facility, or to receive rent
2 from an occupant under a rental agreement, and no real estate
3 license is required.

4 (c) "Occupant" means a person, or his or her sublessee,
5 successor, or assign, who is entitled to the use of the storage space
6 at a self-service storage facility under a rental agreement, to the
7 exclusion of others.

8 (d) "Rental agreement" means any written agreement or lease
9 ~~which~~ *that* establishes or modifies the terms, conditions, rules, or
10 any other provision concerning the use and occupancy of a
11 self-service storage facility.

12 (e) "Personal property" means movable property not affixed to
13 land, and includes, but is not limited to, goods, merchandise,
14 furniture, and household items.

15 (f) "Last known address" means that *mailing address or email*
16 address provided by the occupant in the latest rental agreement,
17 or the *mailing address or email* address provided by the occupant
18 in a subsequent written notice of a change of address.

19 SEC. 2. Section 21702.5 of the Business and Professions Code
20 is amended to read:

21 21702.5. (a) Any lien on a vehicle or vessel subject to
22 registration or identification under the Vehicle Code ~~which~~ *that*
23 has attached and is set forth in the documents of title to the vehicle
24 or vessel shall have priority over any lien created pursuant to this
25 chapter.

26 (b) Any lien created pursuant to this chapter on a vehicle or
27 vessel subject to registration or identification under the Vehicle
28 Code shall be enforced in accordance with ~~the provisions of~~ Section
29 3071 of the Civil Code, in the case of a vehicle, or Section 503 of
30 the Harbors and Navigation Code, in the case of a vessel, and not
31 as prescribed in Sections 21705 to 21711, inclusive.

32 (c) Any lien created pursuant to this chapter on a vehicle or
33 vessel subject to registration or identification under the Vehicle
34 Code shall not include any charges for rent, labor, or other services
35 incurred pursuant to the rental agreement, accruing more than 60
36 days after the date the lien imposed pursuant to this chapter
37 attaches, as set forth in Section 21705, and before application is
38 made for authorization to conduct the lien sale pursuant to the
39 requirements of Section 3071 of the Civil Code or Section 503 of
40 the Harbors and Navigation Code.

(d) Any proceeds from a lien sale shall be disposed of pursuant to Section 3073 of the Civil Code, in the case of a vehicle, or Section 507.5 of the Harbors and Navigation Code, in the case of a vessel.

(e) *In addition to the right to foreclose on the vehicle, watercraft, or trailer, the owner may have the vehicle, watercraft, or trailer towed from the premises if rent and other charges have not been paid for 60 days and the notice required in Section 21703 has been sent. Not less than five days after having the vehicle towed, the owner shall send notice by first-class mail with certificate of mailing or email to the occupant's last known address, stating the name, address, and telephone number of the towing company and the street address of the location where the towed property can be redeemed. When the towing company takes possession of the vehicle, watercraft, or trailer, the owner shall not be liable for the property or damage to the property.*

SEC. 3. Section 21703 of the Business and Professions Code is amended to read:

21703. If any part of the rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address and to the alternative address specified in subdivision (b) of Section 21712. The notice shall be sent by certified mail, postage prepaid, ~~or~~ by regular first-class mail if the owner obtains a certificate of mailing indicating the date the notice was mailed, *or by email*. The notice shall contain all of the following:

(a) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due.

(b) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than 14 days after the mailing of the notice) unless all sums due are paid by the occupant prior to the specified date.

(c) A notice that the occupant may be denied access to the storage space after the termination date if the sums are not paid and that an owner's lien, as provided for in Section 21702, may be imposed thereafter.

1 (d) The name, street address, and telephone number of the owner
2 or his or her designated agent whom the occupant may contact to
3 respond to the notice.

4 SEC. 4. Section 21705 of the Business and Professions Code
5 is amended to read:

6 21705. (a) If the notice has been sent as required by Section
7 21703 and the total sum due has not been paid ~~within 14 days of~~
8 *by* the termination date specified in the preliminary lien notice,
9 the lien imposed by this chapter attaches as of that date and the
10 owner may do all of the following:

11 (1) Deny an occupant access to the space.

12 (2) Enter the space.

13 (3) Remove any property found therein to a place of safekeeping.

14 (b) Upon taking the actions described in subdivision (a), the
15 owner shall send to the occupant, addressed to the occupant's last
16 known address *or email address*, and to the alternative address
17 specified in subdivision (b) of Section 21712, by certified mail or
18 by first-class mail, if the owner obtains a certificate of mailing,
19 postage prepaid, *or demonstrating email has been sent*, both of
20 the following:

21 (1) A notice of lien sale that states all of the following:

22 (A) That the occupant's right to use the storage space has
23 terminated and that the occupant no longer has access to the stored
24 property.

25 (B) That the stored property is subject to a lien, the current
26 amount of the lien, and that the lien will continue to increase if
27 rent is not paid.

28 (C) That the property will be sold to satisfy the lien after a
29 specified date that is not less than 14 days from the date of mailing
30 the notice, unless the occupant executes and returns by certified
31 mail a declaration in opposition to lien sale in the form set forth
32 in paragraph (2).

33 (D) A statement that the occupant may regain full use of the
34 space by paying the full lien amount prior to the date specified in
35 subparagraph (C).

36 (E) That any excess proceeds of the sale over the lien amount
37 and costs of sale will be retained by the owner and may be
38 reclaimed by the occupant or claimed by another person at any
39 time for a period of one year from the sale and that thereafter the

proceeds will escheat to the county in which the sale is to take place.

(2) A blank declaration in opposition to lien sale that shall be in substantially the following form:

DECLARATION IN OPPOSITION TO LIEN SALE

You must complete all sections of this declaration. If the owner cannot contact or serve you at the address and telephone number that you provide below, this declaration shall be void and the owner may sell your stored property. If you return this form to the self-service storage facility where your property is stored, you may file suit in any court with jurisdiction of matters in the amount of the lien (this may be small claims court). The suit must be filed within 21 days of returning this declaration in the jurisdiction where you live or where the self-service storage facility is located or your property may be sold.

I, _____, have received the notice of lien sale
(occupant's name)
of the property stored at _____.
(location and space #)

I oppose the lien sale of the property, because (provide a brief explanation of the reason the owner's lien may not be valid. For example, "I have paid my rent and other charges in full" why your property should not be sold):

My current address is and telephone number are:

(address) _____

(city) _____

(state) _____

(ZIP Code) _____

(telephone number) _____

I understand that the lienholder may file an action against me in any court of competent jurisdiction, including small claims court, at the address provided above, and if a judgment is given in his or her favor, I may be liable for the court costs. I also understand that this declaration is not valid if (a) the address provided in this declaration is not my current address or (b) I change my address at any time prior to service of an action on the lien and I do not provide the owner the address within 10 days of the change. I must file a lawsuit for a hearing on the validity of the lien no later than 21 days after returning this

1 *declaration in opposition to lien sale. If I do not file suit and serve the*
2 *self-service storage facility where my property is stored, my property may be*
3 *advertised for sale and sold by the self-service storage facility owner.*

4 I declare under penalty of perjury that the foregoing is true and correct, and
5 that this declaration was signed by me on _____ at _____ .
6 (date) (place)

7 _____ .
8 (signature of occupant)

9 *Return this declaration to:*
10 *(self-service storage facility address)*

11
12 SEC. 5. Section 21706 of the Business and Professions Code
13 is amended to read:

14 21706. If a declaration in opposition to the lien sale, executed
15 under penalty of perjury, is not received by the owner on or prior
16 to the date specified in the notice of lien sale by certified mail, is
17 not completed and signed by the occupant, ~~if the occupant cannot~~
18 ~~be contacted or served at the address provided in the declaration,~~
19 or if the occupant withdraws the declaration in opposition to the
20 lien sale in writing, the owner may, subject to the provisions of
21 Sections 21708 and 21709, sell the property upon complying with
22 the requirements set forth in Section 21707.

23 SEC. 6. Section 21710 of the Business and Professions Code
24 is amended to read:

25 21710. ~~(a) If a valid~~ declaration in opposition to lien sale is
26 received by the owner prior to the date set forth in the notice of
27 lien sale, the owner may enforce the lien ~~only~~ as follows:

28 ~~(1) File an action to enforce the lien in small claims court as~~
29 ~~provided in Chapter 5.5 (commencing with Section 116.110) of~~
30 ~~Title 1 of Part 1 of the Code of Civil Procedure, provided that the~~
31 ~~amount of the lien is within the monetary jurisdiction of the court.~~
32 ~~If the action is filed in small claims court, all of the procedures set~~
33 ~~forth in that chapter shall apply, including the procedures for~~
34 ~~service of the summons and complaint.~~

35 ~~(2) File an action to enforce the lien in any other court of~~
36 ~~competent jurisdiction, in which case the summons and complaint~~
37 ~~may be served by certified mail, postage prepaid, addressed to the~~
38 ~~occupant at the address provided by the occupant in the declaration~~
39 ~~of lien sale, and service shall be deemed completed on the fifth~~
40 ~~day after the mailing, or in any other manner authorized by Chapter~~

1 ~~4 (commencing with Section 413.10) of Title 5 of Part 2 of the~~
2 ~~Code of Civil Procedure.~~

3 ~~(b) If the owner is granted a judgment in favor of the lien, the~~
4 ~~owner may advertise the goods for sale and sell the property as~~
5 ~~provided in Section 21707.~~

6 *(a) The owner shall not sell the property for 30 days from the*
7 *date of the receipt of the declaration in opposition to the lien sale.*

8 *(b) If the occupant files a complaint in any court of competent*
9 *jurisdiction and serves the owner within 30 days of the owner's*
10 *receipt of declaration in opposition to lien sale, the owner shall*
11 *not sell the goods until the court issues a judgment on the*
12 *occupant's complaint in favor of the owner's lien.*

13 *(c) If the occupant does not serve the owner within 30 days of*
14 *sending the declaration in opposition to lien sale or the owner is*
15 *granted a judgment on the lien, the owner may advertise the goods*
16 *for sale and sell the property as provided by Section 21707.*

17 SEC. 7. Section 21713 of the Business and Professions Code
18 is amended to read:

19 21713. ~~Nothing in this~~ *This chapter shall not be construed to*
20 *impair or affect the right of the parties to create additional rights,*
21 *duties, and obligations in and by virtue of the rental agreement,*
22 *including, but not limited to, the right to limit the value of the*
23 *property the occupant may store in the storage space or the right*
24 *to limit the occupant's right to enter the premises or storage space.*

25 The rights provided by this chapter shall be in addition to all other
26 rights provided by law to a creditor against his or her debtor.